HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C. V. NAGARJUNA REDDY

WRIT APPEAL No.1124 of 2006

Between:

R.Akkayyamma and others. …Appellants.

AND

Superintending Engineer,
A.P. Southern Power Distribution Co.Ltd.,
Vijayawada and others. …Respondents.

:: J U D G M E N T ::

Counsel for the appellants : Sri V.S.R.Anjaneyulu

30th OCTOBER 2006

Per G.S.Singhvi, C.J.

Feeling dissatisfied with the dismissal of Writ Petition No.5733 of 2006 filed by them against the shifting of 160 KVA Distribution Transformer from its present location to Municipal Water Supply Booster, Bangarayya Shop Lane, Kothapet, Vijayawada, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

The appellants are residents of Bangarayya Shop Lane, Chitti Nagar, Vijayawada. They filed writ petition for grant of a declaration that the action of the respondents to shift 160 KVA Distribution Transformer erected near four road junction on the northern side of

Bangarayya Shop Lane to Municipal Water Supply Booster is illegal and violative of Articles 14 and 21 of the Constitution of India. They also prayed for issue of a direction to respondent No.4 – Vijayawada Municipal Corporation to demolish the room constructed by the authorities of Andhra Pradesh Southern Power Distribution Company Ltd. (for short, 'APSPDCL'). In the affidavit filed in support of the writ petition by appellant No.3, Sri R.B.K. Simhachalam, it was averred that on a representation made by the residents of the area, Superintending Engineer, APSPDCL (respondent No.1) assured that 160 KVA Distribution Transformer will not be shifted to Municipal Water Supply Booster, but in complete disregard of the assurance, the transformer is being shifted to the new site. According to the deponent, 6 ft. x 6 ft. room constructed by respondent Nos.2 and 3 has completely blocked the lane causing great inconvenience to the people of the locality. According to him, the branches of Ravi Tree existing near the booster will touch the transformer and this may result in short-circuit causing loss of human lives. According to appellant No.3, despite adverse press publicity, the official respondents are bent upon to shift the transformer to its new location. Paragraphs 3 and 4 of the affidavit of Shri R.B.K. Simhachalam, which contain these averments read as under:

> "3. I respectfully submit that after prolonged representation by all the residents of the area including the petitioners, the first respondent vide letter No.SE/O/Vijayawada/Tech./D.No.3006/05 dated 14-12-2005 informed one of the residents of the locality stating that he has informed the concerned official not to erect the Distribution Transformer at Booster Point from the existing place. A copy of the proceedings dated 14-12-2005 are filed herewith as a material paper and it is requested to read the same as a part of this affidavit. The first respondent has also existing 160 KVA Transformers from the existing place to Booster Point and necessary action will be taken against the erring officers. At this stage it is relevant to mention that there is a Municipal Booster (hereinafter called) relating to supply of drinking water at Bangarayya Shop Lane will be taken.

4. I respectfully submit that contrary to the proceedings issued by respondent No.1, respondent Nos.2 and 3 have constructed a room 6 x 6 ft. area on a road on the northern side just abutting the Booster. On account of the construction of the room, the residents of second cross road have lost their passage rights. There is no possibility of movement even for two wheelers. Therefore, the residents of the area are put to lot of inconvenience. It is relevant to submit that on the southern side of this Booster there is a small lane upto a height of 5' feet. Residents of second road near Bangarayya Shop Lane, if they want to have movement through this lane, they have to reach a height of 5' feet and move from the road. Having constructed room respondent Nos.2 and 3 are intending to shift the 160 KVA Distribution Transformer to install just abutting the room. The respondent Nos.2 to 4 are making attempts to close the road which is only an alternative road on eastern side to Booster. In result, the residents are put to lot of trouble. The existing place where 160 KVA Distribution Transformer is situated in a four – road Junction. Some selfish people for their selfish interest influenced respondent Nos.2 and 3 to shift the Transformer nearer to the Booster. It is also relevant to mention that nearer to the Booster there is a big "Ravi Tree". The branches of the "Ravi Tree" will touch electricity Transformer at any time and in result there is every possibility of short circuit, which results in occurrence of deaths to human beings. During rainy seasons when branches of "Ravi Tree" touches the transformer, electricity would pass through and there is every chance of human loss. Moreover, at a short distance there is a Nagendra Swamy Temple, which is having history of more than fifty years. Residents of the area would be visiting this temple very often to submit their offerings and to have prayers. Therefore, there is every possibility that the devotees would come in touch with the transformer which can cause human loss all these problems only the first respondents has issued the proceedings dated 14-12-2005. Moreover, the local corporator of 32nd division submitted a representation to the concerned official requesting not to shift the Transformer. There is lot of press circulation in the area about this issue. On a consideration of these facts, it is clear that if the Transformer is permitted to be shifted to a place as programmed by respondent Nos.2 and 3, the residents would be put to serious prejudice and irreparable loss, since

there is every chance of threat to human life."

In the counter affidavit filed by Sri P.Anjaiah, Superintending Engineer (Operation), APSPDCL, Vijayawada, it was averred that the decision to shift the transformer was taken on an application made by Sri P.Appa Rao, a resident of Bangarayya Shop Lane, who agreed to pay the necessary shifting charges and deposited Rs.19,710/-. Shri Anjaiah further averred that the shifting of transformer to its new location will be in public interest because the same will enhance supply of drinking water from the municipal booster point. For the sake of convenient reference, paragraphs 4 to 9 of the counter affidavit (as contained in the paper book) are reproduced below:

> "4. It is submitted that Sri P.Appa Rao, a resident of Bangarayya shop lane made an application to the Addl.Asst. Engineer/Operation/ Kothapet to shift the distribution transformer existing in front of his house for renovation of his house and also agreed to pay the necessary shifting charges. Accordingly, estimate was sanctioned vide Memo No.EE/O/T/VJA/ Comml/F.D.No.2629/05, Dt.10-05-2005 for Rs.19,710/-.
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> 5. It is submitted that the said applicant paid the above charges to the department vide D.D.No.00020, dt.23-11-2005. Soon after payment of estimated charges, the shifting of distribution transformer was taken up. In this connection, it is also to submit that the existing transformer to shift beside the Vijayawada Municipal pumpset for which municipality engineers accepted orally. After their acceptance they raised a pillar beside the said booster point up to 6½ ft. If the 160 KVA distribution transformer is shifted to Booster point, the problem of low voltage will also be solved.
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> 6. It is submitted that in view of public interest of hill area to solve drinking water problem it was proposed to shift the 160 KVA distribution transformer from the existing place beside Booster point of Vijayawada Municipal Corpn.
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> 7. It is submitted that it is not true that a room of area 6 ft. x 6 ft. has been constructed on the road on the northern side of the booster. Moreover, on any side, the room was constructed. On account of shifting of transformer from existing place to proposed place, it will not cause any inconvenience to

general public in any manner or there is no imminent danger, that we will not erect the existing transformer nearer to 'Ravi tree' as alleged in the writ petition.

8. It is submitted that for erection of distribution transformer, the construction of the pillar was completed on the southern side of the booster of Vijayawada Municipal Corporation. The platform on the pillar is above 7 ft. from the ground level. If the distribution transformer is erected it will give sufficient power to the booster point of Vijayawada Municipal Corporation with reliable and quality power supply and low voltage problem to the booster. In turn, drinking water problem and also low voltage problem from the residents on the hill area will be solved.

9. It is submitted that also, the distribution transformer, which will be well above the ground level as already stated above, hence, there is no possibility of danger to the public. Moreover, the distribution transformer, which is very much essential, and only the basic equipment to supply the power to the public and one cannot avail power supply without distribution transformer."

The learned Single Judge referred to the provisions of the Electricity Act, 2003 (for short, 'the Act') and held that the Court cannot interfere with the decision taken by the competent authorities in matters of generation, transmission and supply of electrical energy, which are highly technical matters. He observed that shifting of the existing transformer from one place to the other is also a technical matter and the Court, which does not possess expertise in such issues, cannot interfere with the decision of the competent authority unless substantive evidence of mala fides is produced. The learned Single Judge dismissed the writ petition leaving the petitioners free to approach respondent No.1 for redressal of their grievance.

Shri V.S.R.Anjaneyulu vehemently argued that the reasons assigned by the learned Single Judge for declining to interfere with the action of the respondents to shift 160 KVA Distribution Transformer from its existing location to Municipal Water Supply Booster situated in Bangarayya Shop Lane are legally untenable and the order under

challenge is liable to be set aside. Learned counsel then argued that the decision to shift the transformer is liable to be declared as vitiated by mala fides because the officer concerned did not take into account the elements of public interest and the fact that serious inconvenience will be caused to the public at large by installation of the transformer near Municipal Water Supply Booster. Sri Anjaneyulu referred to letter dated 14-12-2005, vide which the Superintending Engineer informed Sri S.A. Kareem that the concerned officers have been instructed not to shift the Distribution Transformer at Booster point, and argued that the contra action taken by the respondents is liable to be nullified on the ground of arbitrary exercise of power.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to interfere with the order under challenge. Rather, we are in complete agreement with the learned Single Judge that matters relating to generation, transmission and distribution of electrical energy are highly technical and the Court cannot interfere with the exercise of power and discretion by the concerned authorities except when the action complained of is shown to have been taken in violation of the mandate of any statutory provisions or the same results in patent violation of any legal or fundamental right of the individual, or there is strong evidence of malice in fact.

In the present case, the appellants have not levelled any allegation of personal ill-will or bias against respondent No.1. In his affidavit,

Shri R.B.K. Simhachalam has not averred that the impugned decision is founded on extraneous reasons. He has also not alleged that respondent No.1 or any other authority of APSPDCL has decided to shift the transformer with an ulterior motive. It is also not the pleaded case of the appellants that the decision of the respondents to shift 160 KVA Distribution Transformer from its present location to the Municipal Water Supply Booster is contrary to the provisions of the Act.

Therefore, it is not possible to nullify the impugned decision simply because the appellants feel that the same may result in inconvenience to the people of the area or there is some possibility of accident.

In our opinion, before passing an order for shifting of the transformer to Municipal Water Supply Booster situated in Bangarayya Shop Lane, the concerned officers must have considered the issue from various angles and then taken the decision.

We are further of the view that the so-called assurance given by respondent No.1 vide letter dated 14-12-2005 cannot be made basis for granting a declaration that shifting of 160 KVA Distribution Transformer is vitiated due to mala fides or arbitrary exercise of power.

There is another strong reason for our disinclination to entertain the grievance of the appellants. They have not impleaded APSPDCL and Sri P.Appa Rao, at whose instance the decision to shift the transformer is said to have been taken, as parties to the petition. Respondent Nos.1, 2 and 3 are the officers of APSPDCL and not the company itself, which has a juridical existence and which can sue and be sued in its own name. Therefore, non-impleadment of the company as party respondent is fatal to the cause of the appellants. Similarly, the appellants' omission to implead the person who can be said to be primarily responsible for initiation of the action for shifting of 160 KVA Distribution Transformer is also fatal to the maintainability of the cause set up by them.

For the reasons mentioned above, the appeal is dismissed. However, liberty is given to the appellants to make representation to respondent No.1 and higher authorities of APSPDCL to review the decision regarding installation of the transformer at Municipal Water Supply Booster and convince the concerned authorities that it will be in public interest to shift the transformer from that place.

As a sequel to dismissal of the appeal, WAMP.No.2353 of 2006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, C.J.

30th October, 2006.

C. V.NAGARJUNA REDDY, J.

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